

NOT FOR PUBLICATION

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Salvador Sanchez Macias,

Petitioner,

v.

Charles L Ryan, et al.,

Respondents.

No. CV-13-00943-PHX-SRB

**ORDER**

On May 6, 2013, Petitioner filed his Petition for Writ of Habeas Corpus claiming that his Fifth, Sixth and Fourteenth Amendment rights were violated when the trial court changed the plea agreement without his knowledge or permission, by the prosecutors misrepresentation of Arizona statutes in the plea agreement, and because Petitioner's counsel was ineffective for not objecting to changes in the plea agreement. Petitioner also alleged a second ground which was dismissed on screening because Petitioner failed to assert a violation of the constitution, laws or treaties of the United States. In Ground Two Petitioner states that the question before the Court was whether Arizona Rule 32.3 was unconstitutional "due to the fact that it innates the suspension of a writ of habeas corpus to Arizona state prisoners?" (Doc. 1, Pet'r's Pet. for Writ of Habeas Corpus at 6.)

Respondents filed a response to the petition on September 26, 2013 and Petitioner filed a reply/traverse on October 7, 2013. The Magistrate Judge issued a Report and Recommendation on December 18, 2013 recommending that the petition be dismissed without prejudice.

1 The record reflects and Petitioner does not dispute that there is a pending Petition  
2 for Review before the Arizona Court of Appeals of the dismissal of Petitioner's state  
3 court Petition for Post-Conviction Relief. The sole ground raised in the state court  
4 petition was a claim of newly discovered evidence.

5 As the Magistrate Judge noted and as Respondents argued the claims Petitioner  
6 raises before this Court have never been presented to the state court. Petitioner argues  
7 that this court should resolved the questions in any event, even though he has not  
8 presented them to the state court. The Magistrate Judge rejected Petitioner's contention  
9 that this Court has the authority to bypass state remedies and recommended that this  
10 petition be dismissed without prejudice to allow the conclusion of the state court  
11 proceedings.

12 Petitioner filed timely written objections on January 10, 2014, in which he claims  
13 that this Court must determine if state officers committed an unethical judicial act or  
14 committed a criminal act and violated Petitioner's constitutional rights and substantive  
15 due process rights in connection with his allegation that the plea agreement was changed  
16 and that the prosecutor made misrepresentations about Arizona statutes and the plea  
17 agreement. Petitioner's objection also states that the Court should determine issues  
18 related to the federal statute of limitations.

19 Petitioner's objections are overruled. The Magistrate Judge explained in the  
20 Report and Recommendation why exhaustion in state court is required before the issues  
21 raised in this petition are brought to federal court. The Magistrate Judge also found that  
22 there was no apparent prejudice to Petitioner from a dismissal without prejudice  
23 explaining that Petitioner would have at least six months of his one-year limitation period  
24 remaining upon the conclusion of his state court proceedings.

25 This Court agrees with the Report and Recommendation of the Magistrate Judge  
26 that dismissal without prejudice is the appropriate remedy in this case because it cannot  
27 be disputed that Petitioner has failed to exhaust his claims in state court and that he still  
28 has state court proceedings pending.

1 IT IS ORDERED overruling the objections of the Petitioner to the Report and  
2 Recommendation of the Magistrate Judge.

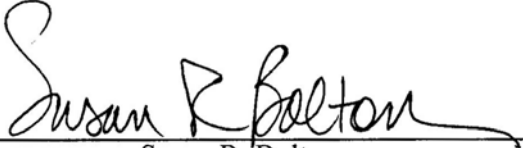
3 IT IS FURTHER ORDERED adopting the Report and Recommendation of the  
4 Magistrate Judge as the Order of this Court. (Doc. 16)

5 IT IS FURTHER ORDERED that the Petition for Writ of Habeas Corpus is  
6 dismissed without prejudice. (Doc. 1)

7 IT IS FURTHER ORDERED denying a Certificate of Appealability because jurist  
8 of reason would not find it debatable whether this Court was correct in its procedural  
9 ruling.

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11 Dated this 31st day of January, 2014.

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Susan R. Bolton  
United States District Judge